RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक ३५] गुरुवार ते बुधवार, नोव्हेंबर १३-१९, २०१४/कार्तिक २२-२८, शके १९३६ [पृष्ठे २३, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

उद्योग, ऊर्जा व कामगार विभाग

मंत्रालय, मुंबई ४०० ०३२, दिनांक २० सप्टेंबर २०१४

अधिसूचना

क्रमांक. आयसीई. ०९१४/प्र.क्र. ६६/काम-६.—महाराष्ट्र चौकशी न्यायालय, कामगार न्यायालये व औद्योगिक न्यायालये यांचे न्यायिक अधिकारी (सेवाप्रवेश, नियुक्ती आणि शिस्तभंग विषयक कार्यवाही) नियम, १९९९ च्या नियम ५ नुसार प्रदान करण्यात आलेल्या अधिकारांचा वापर करून मा. उच्च न्यायालय, मुंबई यांनी त्यांचे पत्र क्र.अे १२२६/८३/२७२०, दिनांक २१ ऑगस्ट २०१४ अन्वये केलेल्या शिफारशी नुसार " श्री. तुराबपाशा मोईनुद्दीन जहागिरदार यांची सदस्य, औद्योगिक न्यायालय, मुंबई " या पदावर नियुक्ती करण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

शैलजा सं शिरोडकर,
कक्ष अधिकारी.

In pursuance of clause (3) of Article 348 of the Constitution of India, the following translation in English of the Government Notification, Industries, Energy and Labour Department, No. ICE. 0914/C.R. 66/Lab-6, dated the 20th September 2014, Ordinary is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

D. S. RAJPUT,
Deputy Secretary to Government.

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT
Mantralaya, Mumbai 400 032, dated the 20th September 2014

NOTIFICATION

No. ICE. 0914/C.R. 66/Lab-6.—In exercise of the powers conferred by Rule 5 of Maharashtra Judicial Officers of the Courts of Enquiry, Labour Court, Industrial Courts (Recruitment, Appointment and Disciplinary Action) Rule, 1999 and with reference to the letter of Hon'ble High Court, Mumbai No. A. 1226/83/2720, dated 21st August 2014, the Government of Maharashtra hereby appoints "Shri Turabpasha Moinuddin Jahagirdar as Member, Industrial Court, Mumbai."

By order and in the name of the Governor of Maharashtra,

SHAILAJA S. SHIRODKAR,
Desk Officer.

उद्योग, ऊर्जा व कामगार विभाग

मंत्रालय, मुंबई ४०० ०३२, दिनांक २० सप्टेंबर २०१४

अधिसूचना

क्रमांक. आयसीई.०९१४/प्र.क्र. ६७/काम-६.—महाराष्ट्र चौकशी न्यायालय, कामगार न्यायालये व औद्योगिक न्यायालये यांचे न्यायिक अधिकारी (सेवाप्रवेश, नियुक्ती आणि शिस्तभंग विषयक कार्यवाही) नियम, १९९९ च्या नियम ५ नुसार प्रदान करण्यात आलेल्या अधिकारांचा वापर करून मा. उच्च न्यायालय, मुंबई यांनी त्यांचे पत्र क्र.अे १२२६/८३/२९००/१४, दिनांक १ सप्टेंबर २०१४ अन्वये केलेल्या शिफारशी नुसार " श्री. राजाराम पुरुषोत्तम पांडे यांची सदस्य, औद्योगिक न्यायालय, सातारा " या पदावर नियुक्ती करण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

शैलजा सं शिरोडकर,
कक्ष अधिकारी.

In pursuance of clause (3) of Article 348 of the Constitution of India, the following translation in English of the Government Notification, Industries, Energy and Labour Department, No. ICE. 0914/C.R. 67/Lab-6, dated the 20th September 2014, Ordinary is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

D. S. RAJPUT,
Deputy Secretary to Government.

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT

Mantralaya, Mumbai 400 032, dated the 20th September 2014

NOTIFICATION

No. ICE. 0914/C.R. 67/Lab-6.—In exercise of the powers conferred by Rule 5 of Maharashtra Judicial Officers of the Courts of Enquiry, Labour Court, Industrial Courts (Recruitment, Appointment and Disciplinary Action) Rule, 1999 and with reference to the letter of Hon'ble High Court, Mumbai No. A. 1226/83/2900/14, dated 1st September 2014, the Government of Maharashtra hereby appoints "Shri Rajaram Purushottam Pande as Member, Industrial Court Satara."

By order and in the name of the Governor of Maharashtra,

SHAILAJA S. SHIRODKAR,
Desk Officer.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 33 OF 2002.—(1) Managing Director, The Maharashtra State Co-op. Agriculture and Rural Development Bank Ltd., Bombay, Plot No. 15-A, Morvi Lane, Bombay-7, (2) Divisional Officer, The Maharashtra State Co-op. Agriculture and Rural Development Bank Ltd., Bombay, Divisional Office, Kolhapur, 204E/Kh, Tarabai Park, Near Pearl Hotel, Kolhapur, (3) Divisional Officer, The Maharashtra State Co-op. Agriculture and Rural Development Bank Ltd., Bombay, Divisional Office, Nagpur, Ganeshpeth, Nagpur.—*Petitioners*—*Versus*–Shashikant, S/o. Rameshpant Kavishwar, 'Kaustubh', Near Dr. Kapale's Hospital, Abdev Line, Mahal Nagpur.—*Respondent.*

In the matter of Revision u/s. 44 of the M. R. T. U. and P.U. L. P. Act, 1971.

CORAM.—C. A. Jadhav, Member.

Appearances.—Shri R. L. Chavan, Advocate for the Petitioners.

Shri D. S. Joshi, Advocate for the Respondent.

Judgment

This is a revision by original Respondent-Bank challenging legality of order passed below Exh. U-34 in Complaint (ULP) No. 108/1993 by Labour Court, Kolhapur, whereby its application for amendment of the written statement is rejected by relying upon decision of Hon'ble Apex Court in *Shabhu-Nath Goyal V/s. Bank of Baroda reported in 1984 I LLN at page 8.*

2. It is not in dispute that present Respondent (hereinafter referred to as 'the Complainant') was dismissed by present Petitioner (hereinafter referred to as the Bank) after a domestic enquiry on 4th August 1988. He then filed above complaint on 31st March 1993. He challenged the dismissal on various grounds. The Bank filed its written statement in the year 1994. The parties then went to the trial. Thereafter, arguments were made by the learned Advocate representing the Complainant and arguments of learned Advocate representing the Bank were partly concluded.

3. The Bank then filed an application (Exh. C-34) for amendment of the written statement and proposed to plead that if the enquiry is held to be illegal, improper and findings thereof as perverse, then it be allowed to lead evidence to substantiate the charges attributed to the Complainant.

4. The Complainant objected the application *vide* reply Exh. U-35 contending that he is struggling since the year 1988 but the Bank is resorting to delay tactics for wrecking his moral. No explanation is given for filing the amendment application after 14 years of his termination and the application for amendment is contempt of directions of Hon'ble Apex Court in *Shabhu Nath Goyal* V/s. *Bank of Baroda, reported in 1984 I LLN at page 8.*

5. The Complainant prayed for rejecting the application by awarding costs of Rs. 5,000.

6. Learned Labour Court after hearing both Advocates, observed that application is made at the fag end of the proceedings. There are no sufficient reasons for delay and proposed amendment is contrary to the observations in Shabhu Nath Goyal's case. It then rejected the application (Exh. C-34) on 25th May 2002. Said order is challenged in this Revision.

7. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order rejecting the application for amendment and thereby refusing the Bank to lead evidence to substantiate its action, if findings of the Enquiry Officer are held to be perverse, is legal and proper ?

(*ii*) What order ?

8. My findings on above points, are as under :—

(*i*) Yes.

(*ii*) The Application is rejected.

Reasons

9. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinise rival pleadings, meticulously. The only material question is whether the impugned order is perverse or justifiable.

10. Shri Chavan, learned Advocate representing the Petitioner-Bank submitted that the bank has no-where applied for permission to lead the evidence, in case, findings of the Enquiry Officer are held to be perverse. According to him, therefore, decision in Shabhu Nath Goyal's case does not bar or prohibit an application for amendment of the written statement. He then submitted that an application for amendment of the written statement can be made at any time, and observations of the Labour Court that the same is made at the fag end, are improper. He further submitted that the Labour Court has yet to decide as to whether findings of the enquiry officer are perverse or not and the application for amendment of the written statement is made prior to recording of a finding regarding perversity. According to him, therefore stage of recording a finding regarding perversity has yet to come and the amendment application ought to have been allowed by taking a liberal approach. He relied upon same decisions referred and relied before the Labour Court.

11. Shri Joshi, learned Advocate representing the Complainant replied that the the Bank has not prayed at any time for deciding issue of perversity as preliminary one and permission to lead evidence if the same goes against the Bank. On the contrary, all issues were to be heard and decided together. The amendment application was made after both parties closed their evidence, his arguments were heard and the arguments of the Bank, were partly concluded. It is nowhere explained as to why amendment application was sought after 14 years and a permission to lead evidence is made in the form of the amendment application. Proposed amendment is contrary to the observations in Shabhu Nath Goyal's case. Law laid down in Shabhu Nath Goyal's case is held to be correct law in later decision of Hon'ble Apex Court in *Karnataka State Road Transport Corporation* V/s. *Laxmi Devamma (Smt) and another reported in 2001 II CLR at page 640.* He also relied upon another decision of Madras High Court in *Management of Easun Machine Tool Works, M. T. H. Road-Tirunintravyr, Madras* V/s. *The Presiding Officer, IInd Addition Labour Court, Madras and Another reported in 2002-I CLR at page 695 (Madras H. C.).*

12. The question regarding the stage at which the management should request for permission to adduce evidence to justify dismissal if the domestic enquiry is found to be bad, is clearly answered by Hon'ble Apex Court in Shabhu Nath Goyal's case. It is held that the management should exercise its right to lead evidence at the earliest stage and file such application, without unreasonable delay. It is further observed that if the management does not chose to do so while filing written statement, then it cannot be allowed to do so at any later stage. In my humble opinion, therefore, application of plea seeking permission to lead evidence to justify the action, in case the enquiry and/or findings are held to be bad/perverse, has to be raised at the earliest opportunity and without unreasonable delay. Otherwise, delay may lead to wrecking the moral of the workman and compile him to surrender which he may not otherwise do. Law laid down in Shabhu Nath Goyal's case is held to be correct law, in the later decision of Hon'ble Apex Court in Karnataka State Road Transport Corporation *V/s.* Laxmi Devamma (Smt) referred above. In the present case, the Bank is practically making an application under the guise of the amendment application, seeking permission to adduce evidence to justify its action. In other words, prayer to lead evidence is made in the form of the amendment application. It is cardinal principle of law that a relief which cannot be claimed directly also cannot be claimed indirectly. The Bank is indirectly seeking permission to lead evidence by way of proposed amendment. Such mode is impermissible as laid down in Shabhu Nath Goyal's case. In addition, there is no explanation for filing application (Exh C-34) at the fag end of the trial. In such circumstances, I find that the learned Labour Court has rightly rejected the application for amendment of the written statement. I am cautious of the proposition that the application for amendment of the pleadings can be made at any stage of the proceeding and the Court should be liberal. However, decision in Shabhu Nath Goyal's case is clearly applicable to this case and, therefore provisions under order 6, rule 17 of the Civil Procedure Code, cannot be automatically applied to this case. There were no averments in the written statement that the Bank intends to lead evidence. As such, now the Bank can not be permitted to lead the evidence even under the garb of the amendment application, at the fag end of the trial.

13. In the background of above discussions, I find that impugned order does not spell of perversity or arbitrariness. On the contrary, learned Labour Court has rightly followed mandate in the decision of Hon'ble Apex Court in Shabhu Nath Goyal's case and there is every substance in its reasoning. As such, there is no merit in the revision Application. Accordingly, I answer Point No. 1 in the affirmative and pass following order.

Order

(*i*) The Revision Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 29th July 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 81 OF 2002.—Shri Krishnakumar Gopal Harkulkar, At Post Malgaon, Tal. Malvan, Dist. Sindhudurg.—*Petitioner*—*Versus*—Maharashtra State Road Transport Corporation, Sindhudurg Division, Kankavali, through its Divisional Traffic Officer.—*Respondent.*

In the matter of Revision u/s. 44 of the M. R. T. U. and P. U. L. P. Act.

CORAM.—C. A. Jadhav, Member.

Appearances.–Shri B. D. Manolkar, Advocate for the Petitioner.

Shri M. G. Badadare, Advocate for the Respondent.

Judgment

This is Revision by original Complainant challenging legality of judgment and order passed in Complaint (ULP) No. 170 of 1991 by Labour Court, Kolhapur, whereby relief of reinstatement with continuity of service and full back wages, is refused by dismissing his complaint.

2. Admittedly, present Petitioner (hereinafter referred to as the Complainant) joined present Respondent (hereinafter referred to as the Respondent-Corporation) as a driver in March, 1989. The Corporation served chargesheet dated 9th January 1991 under clauses 11, 15, 22 and 39 of its Discipline and Appeal Procedure, upon him. It is mainly alleged that he drove S. T. Bus on 26th August 1990 in a rash and negligent manner, caused an accident and thereby injured 4 passengers and himself. The Complainant denied the charges. Then enquiry took place. The Enquiry Officer found him guilty of all misconducts. Ultimately, the Complainant came to be dismissed with effect from 26th June 1991.

3. It is case of the Complainant that he was not driving the bus in an excessive speed. In fact, the road has many curves and it was slippery due to rains. He was driving the bus cautiously and the incident was purely an accident. No statements of the passengers were recorded in his presence nor copies thereof were supplied to him. No witnesses were examined in the enquiry. It is then contended that the Enquiry Officer acted as a prosecutor and the evidence in the enquiry was insufficient to hold him guilty. As such, findings of the Enquiry Officer are perverse. It is further contended that his past record is clean and unblemished and punishment of dismissal is shockingly disproportionate. According to the Complainant, therefore, the Corporation has engaged in an unfair labour practice under items 1(*a*), (*b*), (*d*), (*f*) and (*g*) of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. Consequently, he has claimed requisite declaration of unfair labour practice and usual reliefs.

4. The Complainant also made an application under section 30(*2*) of the M.R.T.U. and P.U.L.P. Act to allow him to join duties. Learned Labour Court passed *ad-interim* order directing the Corporation to allow the Complainant to join duties until further orders, with show cause notice. Accordingly, the Corporation allowed him to join duties.

5. The Corporation filed its say-*cum*-written statement at Exh. 11 and traversed all material allegations made by the Complainant. It contended that the Complainant was negligent while driving the bus at a curve, whereby it titled at right side causing injuries to four passengers, the Complainant himself as well as damage to the bus. Eventually, he was chargesheeted. Sufficient opportunity of being heard was given to the Complainant and findings of the Enquiry Officer are well justifiable. Punishment of dismissal, considering seriousness of proved misconducts, is proper. Finally, the Corporation justified its action and prayed for dismissal of the complaint.

6. Considering rival pleadings, learned labour Court framed issues at Exh. 16 and the parties went to the trial. None of the parties led oral evidence. The Complainant admitted legality and validity of the enquiry. The Corporation produced entire enquiry papers including Complainant's default-cards.

7. Learned Labour Court, on perusal of evidence and hearing both parties, held that the Complainant's plea of failure of break is after thought. The bus, after the incident, was driven by the Depot people without any difficulty and the facts are not disputed. It, therefore, held that findings of the Enquiry Officer cannot be held to be perverse. As regards proportionality of the punishment, it observed that the Complainant was carrying more responsibility but was negligent and the punishment cannot be held to be shockingly disproportionate or excessive or harsh. Ultimately, it dismissed the complaint on 19th March 1993. Said decision is challenged in this Revision.

8. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned finding that findings of the Enquiry Officer are justifiable, warrants interference ?

(*ii*) Whether impugned finding that punishment of dismissal is legal and proper, is sustainable in law ?

(*iii*) What order ?

9. My findings, on above points, are as under :—

(*i*) No,

(*ii*) No,

(*iii*) The Revision Application is partly allowed.

Reasons

10. It needs to be stated, at the outset, that the Corporation continued Complainant's employment despite dismissal of the complaint. This Revision Application was filed on 14th August 2002 and the Complainant was terminated on 28th August 2002.

11. Considering delay in filing the Revision Application, a notice before admission was served upon the Corporation. It is case of the Complainant that he was unaware of impugned decision, immediately applied for certified copy on realisation of impugned decision and filed Revision Application on same day. I admitted the Revision after hearing both parties, as per order dated 28th February 2003. It is seen that the Corporation was also unaware of impugned decision and allowed the Complainant to work till 28th February 2003. The record shows that notice of this Revision Application was served upon the Corporation, on 25th August 2002.

12. Shri Manolkar, learned Advocate representing the Complainant submitted that the accident took place on a steep blind curve and the road was slippery due to rains. As such, the incident was purely an accident and no misconduct can be attributed to the Complainant.

13. In my judgment, the facts appreciated by the Labour Court, are self eloquent. Learned Labour Court has recorded a justifiable findings of fact. The same cannot be re-appreciated while exercising limited jurisdiction under sec. 44 of the M.R.T.U. and P.U.L.P. Act. Complainant's theory regarding failure of breaks is rightly dis-believed branding the same to be after thought. It appears that the Complainant could not control the bus, then climbed on a heap and titled on right side. As such, plausible finding of the Enquiry Officer cannot be held to be perverse and learned Labour Court has rightly held them to be justifiable warranting to interference. Accordingly, I answer Point No. 1 in the negative.

14. Advocate Shri Manolkar, in the second phase, argued that none of the passengers are seriously injured, but suffered superficial injuries. Complainant's past record is clean but the same is not considered while imposing punishment. He further submitted that Complainant's past record since 19th March 1993 till 28th August 2002 is clean and unblemished. He relied on the decision in *Divisional Controller, Maharashtra State Road Transport Corporation, Bhandara* V/s. *Gulab Tanbaji Bhandarkar reported in 1998 (1) Mah. L. J. at page 818.* He also relied on another decision in *Ramdas Navi* V/s. *Divisional Controller reported in 1992 II CLR at page 238* and submitted that punishment of dismissal for single act of accident was condemned.

15. In Ramdas Navi's case (referred above) it is observed that single act of accident does not deserves punishment by way of an economic death by removing a bus driver from service. I am unable to satisfy as to how learned Labour Court held above proposition inapplicable to this case. On the contrary, it is applicable.

16. In Bhandarkar's case (referred above) there was an accident resulting into death of 5 passengers and the accident took place at the steep blind curve. Employee therein was found to be totally rash and negligent, however, his past record was good. It is observed by His Lordship that past record serves as a barometer to consider nature of punishment to be imposed. Case of an employee who commits misconduct on one occasion is certainly different from that of an employee who has been charged on several occasion for misconducts and misconduct proved against him. Similarly, the nature of the misconduct would also be a factor relevant for imposition of punishment.

17. In the present case, Complainant's past record is admittedly good. Corporation's Council has not disputed the submissions that Complainant's record from 1993 till 2002 is good. In such circumstances, decision in Bhandarkar's case is clearly application to this case. I, therefore, held, in the peculiar circumstances of this case, that punishment of dismissal was totally unjustifiable. Complainant's case is covered by another set of circumstances illustrated in Bhandarkar's case. His past and post record serves as a barometer. Finally, I hold that extreme punishment of dismissal is unsustainable in law. Accordingly, I answer Point No. 2 in the negative.

18. Now, a question arises as to which relief the Complainant is entitled to as well as punishment ? He is not in the employment for a period of 2 months after impugned dismissal and then from 28th August 2002 till today. In my Judgment, withholding of back wages for such period and permanent withholding one increment will be proper punishment.

19. In the background of above discussions and findings, the Revision Application needs to be allowed partly by setting aside impugned decision to the extent of punishment. Consequently, I pass the following order.

Order

(*i*) The Revision Application is partly allowed.

(*ii*) Impugned decision entirely dismissing the complaint, is set aside.

(*iii*) The Complainant is partly allowed. The Respondent is directed to reinstate the Complainant with continuity of service but without back wages by withholding one increment permanently. The Respondent is directed to reinstate the Complainant, as above, within one month from today.

(*iv*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 26th August 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 82 OF 2002.—Shri Vijay Sitaram Patil, R/o. Lakshatirth Vasahat, Narsinha Colony, Unit No. 38, Kolhapur.—*Petitioner—Versus*—Yashwant Iron and Steel Works, 1325/46/B, 'E' Ward, Shivaji Udyamnagar, Kolhapur, through its Managing Director.—*Respondent.*

In the matter of Revision u/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Appearances.–Shri U. B. Jadhav, Advocate for the Petitioner.

Shri A. T. Upadhye, Advocate for the Respondent.

Judgment

This is Revision by Original Complainant challenging legality of order passed below Exh. U-2 in Complaint (ULP) No. 183 of 2001 by Labour Court, Kolhapur, whereby, relief of interim temporary reinstatement is refused.

2. Present Petitioner (hereinafter referred to as the Complainant) filed above complaint against present Respondent (hereinafter referred to as the Company) alleging unfair labour practice under items 1 (*a*), (*b*), (*d*), (*e*), (*f*) and (*g*) of Schedule-IV of the M.R.T.U. and P.U.L.P. Act, *inter alia* contending that he started working under the Company as a helper on 1st July 1995 for doing work of perennial nature. However, the Company purposely issued appointment orders for a specific period by giving artificial breaks so as to deprive him from the benefits of permanency. In fact, he is appointed on a permanent vacant post for doing work of perennial nature. It is then contended that he has worked continuously for more than 240 days in one year and is entitled to all benefits of permanency. Even then his services are terminated by order dated 30th May 2001. It is further alleged that his termination is in violation of mandatory provisions under section 25-F of the Industrial Dispute Act. Finally, the Complainant has prayed for reinstatement with continuity of service and full back wages. He also made an application (Exh U-2) under section 30(2) of the M.R.T.U. and P.U.L.P. Act to direct the Company to allow him to join duties, till decision of main complaint.

3. The Company filed its say *cum* written statement at Exh. C-11 contending that it does work of sugar industries and that too in off seasons of the Sugar Industries. Additional workmen are required to be engaged for discharging temporary increase of the work-load. For that purpose, some workmen are employed on daily rate basis for a particular work and period. The Complainant is one of them. Complainant's appointment came to an end after the fixed period. As such, it has not engaged in any unfair labour practices. It is further contended that Complainant accepted all terms and conditions of employment and then started working. In addition, he has not put continuous service of 240 days and hence question of following provisions of the Industrial Disputes Act, does not arise. Finally, the Company prayed for dismissal of the interim Application as well as the complaint.

4. The Complainant produced zerox copies of E. S. I. card, attendance cards and impugned termination order. The Company produced zerox copies of two appointment orders.

5. Learned Labour Court, on perusal of evidence and hearing both parties, observed that the Complainant has *prima facie* failed to establish that he has put in continuous service of 240 days and no case is made out to grant interim relief which is final in nature. It, therefore, rejected the interim Application (Exh. U-2) on 19th August 2002. Said order is challenged in this Revision.

6. I heard both Advocates, at length. Considering rival submissions, following points arise for my determination :—

7. (*i*) Whether impugned order refusing to grant interim relief warrants interference, at this stage ?

(*ii*) What order ?

My findings, on above points, are as under :—

(*i*) No.

(*ii*) The Revision Application is dismissed.

Reasons

8. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to meticulously scrutinised rival pleadings. The only material question is whether impugned order is perverse or justifiable ?

9. Shri U. B. Jadhav, Learned Advocate representing the Complainant argued that the Complainant's E.S.I. Card says that he has joined the Company on 1st July 1995. The attendance cards show that he is appointed on 1st July 1995, 2nd October 1996, 20th June 2000, 1st January 2001 and 2nd January 2001. The cards bears signature of Company's Labour Officer. Termination order dated 30th May 2001 is totally silent regarding Complainant's appointment, and the date thereof. It is not explained by the Company as to how the Complainant is appointed on 1st January 2001 and the Company has produced only two appointment orders dated 20th June 2000 and 2nd January 2001. As such, systematic record is prepared to deprive benefits of permanency. He relied on the decision in *Rajendra Ahire* V/s. *R. V. Tukdeo, Presiding Officer, Nashik and Another reported in 1996 I CLR at page No. 166.* He also relied on the decision in *Chief Executive Officer, Sangli Zilla Parishad, Sangli* V/s. *Shri Rajaram Rau Gavali and Another reported in 2002 II CLR at page No. 111.* He further added that temporary reinstatement does not amount to final relief and balance of convenience lies in favour of the Complainant.

10. Shri Upadhye, Learned Advocate representing the Company replied that the Complainant himself has alleged that he is appointed for specific period. The Complainant has accepted conditions of appointment and those are binding upon him. Those orders, *prima facie* show that he was not appointed to do work of a perennial nature. It is not pleaded in the complaint as to how he has put continuous service of 240 days and there are not particulars. As such, the Labour Court has rightly refused to grant interim relief. He further submitted that grant of requisite relief at the inter locutory stage is in the nature of final relief. He relied on the decision in *Executive Engineer, Maharashtra* V/s. *Industrial Court and another reported in 2001 (III) All Maharashtra Reporter at page No. 566,* and some other decisions. He further added that identical Revision Application (ULP) No. 83 of 2002 is dismissed by this Court on 23rd October 2002.

11. I am respectfully bound by the decisions relied by both sides. In Rajendra Ahire's case (referred above) the employee was engaged and discharged at short intervals in a systematic manner. In the present case, the Company has come with a case under section 2(*oo*)(*bb*) of the Industrial Dispute Act. Complainant's two appointment orders are not disputed by him. It is stated that he is appointed for a specific period and his services will automatically came to an end on expiry thereof. The Complainant has produced zerox copies of attendance cards. Those are no admitted by the Company. In addition there are no particulars in the complaint as to how the Complainant has put continuous service of more than 240 days in one year. In my judgment, therefore, question as to whether the Complainant was appointed permanently or for a specific period, cannot be decided on conjunctures and surmises for the obvious reason that it is mixed question of law and facts. Any observations thereof, in either way, will be premature and arbitrary. The controversy needs to be effectively decided while deciding complaint finally. In such circumstances, no interference is warranted at this stage. It is observed in Chief Executive Engineer, Sangli Zilla Parishad's case (referred above) that Industrial Court, by re-appreciating and re-assessing entire evidence, has exceeded its limited supervisory jurisdiction under section 44 of the M.R.T.U. and P.U.L.P. Act. As such, meticulous re-appreciation of evidence and that too at inter locutory stage, while exercising revisional jurisdiction under section 44 of the M.R.T.U. and P.U.L.P. Act, is impermissible. Accordingly, I answer Point No. 1 in the negative. In the fitness of the matter, directions to Labour Court to decide main complaint expeditiously, are necessary.

12. Finally, I pass the following order.

Order

(*i*) The Revision Application is dismissed.

(*ii*) R. and P. sent to Labour Court, Kolhapur and the parties shall appear there on 10th November 2003.

(*iii*) The Labour Court is directed to decide the main complaint as early as possible.

(*iv*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 20th October 2003.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 85 OF 2002.—Shri Shriniwas Digambar Sapale, Plot No. 203, Salokhenagar, Kalamba Road, Kolhapur.—*Petitioner*—Versus—Divisional Traffic Officer, Maharashtra State Road Transport Corporation, Kolhapur Division, Kolhapur.—*Respondent.*

In the matter of Revision U/s. 44 of the M. R. T. U. and P. U. L. P. Act.

CORAM.—C. A. Jadhav, Member.

Appearances.—Shri S. S. Saptasagar, Advocate for the Petitioner.

Shri M. G. Badadare, Advocate for the Respondent.

Judgment

(Dictated in open Court)

This is Revision by original Complainant challenging legality of judgment and order passed in Complaint (ULP) No. 298 of 1999 by Labour Court, Kolhapur, whereby, relief of reinstatement, continuity of service and full back wages is rejected, by dismissing his complaint.

2. Admittedly, present Petitioner (hereinafter referred to as the Complainant) was in employment of present Respondent (hereinafter referred to as the Corporation) since the year 1994 as a driver. The Corporation served chargsheet dated 9th October 1998 for various misconducts mainly alleging driving in a rash and negligent manner which resulted into death of five passengers, injuries to many others and damage to Corporation's vehicle. The Complainant denied the charges and an enquiry took place. The Enquiry Officer held that all charges levelled against him, are proved. Finally, he was dismissed from service with effect from 30th June 1999.

3. It has also come on the record that the Complainant filed Complaint (ULP) No. 215/1999 apprehending termination. Corporation's Advocate *suo moto* appeared therein and sought time to make submission. In the mean time, the Complainant came to be dismissed. Above new complaint was filed on 14th September 1999 alleging unfair labour practice under items 1(*a*), (*b*), (*d*), (*f*) and (*g*) of Schedule IV of the M.R.T.U. Act, *inter alia,* contending that the enquiry was in gross violation of principles of natural justice and findings of the Enquiry Officer are perverse. In fact, other truck drivers are responsible for alleged incident but their role is nowhere considered. It is alleged that the Complainant was driving the bus with minimum speed. Even then, the Enquiry Officer has recorded a perverse finding. It further alleged that dismissal is with undue haste and was made immediately on realisation presentation of previous complaint. Besides, Complainant's past record is cleans but the same is totally ignored. Finally, the Complainant prayed for requisite declaration of unfair labour practice and other usual reliefs.

4. The Corporation filed its written statement at Exh. C-11 contending that the enquiry is fair and proper and findings of the Enquiry Officer are justifiable. The Complainant drove the S. T. Bus in a rash and negligent manner whereby, five persons expired, many others injured and there was heavy damage to the bus. As such, he cannot foist his responsibility upon the truck drivers. It is then contended that proved misconducts are grave and serious and punishment of dismissal is legal and proper.

5. The Complainant admitted legality and propriety of the enquiry, *vide* pursis (Exh. U-12). None of the parties led oral evidence, *vide* pursis (Exh. CU-14). The Corporation produced entire enquiry papers alongwith Complainant's default card.

6. Learned Labour Court, on perusal of evidence and hearing both parties, held that the enquiry was fair and proper and the findings are not perverse. It then held that considering the manner of accident, punishment of dismissal is not an unfair labour practice. Ultimately, it dismissed the complaint on 31st November 2001. Said decision is challenged in this Revision.

7. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned finding that findings of the Enquiry Officer are not perverse, is justifiable ?

(*ii*) Whether impugned finding that punishment of dismissal, though it is first misconduct, is proper, is sustainable in law ?

(*iii*) What order ?

8. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) No.

(*ii*) The Revision Application is partly allowed.

Reasons

9. On perusal of enquiry papers, it is seen that the Corporation examined its Reporter and was cross-examined by the Complainant. Statement of the Complainant was also recorded. The Enquiry Officer has relied upon statements recorded by Police as well as Panchnama prepared by them. Report of the Depot Manager says that the truck driver whose truck was overtook by the Complainant ought to have lowered his speed so as to enable the Complainant to take his bus to the left and allow another truck coming from opposite other side, to pass easily. It is also reported that truck driver coming from opposite side ought to have lowered his speed. It is not disputed that Complainant's bus was dashed from back side after its collusion with truck coming from opposite side.

10. Shri Saptasagar, learned Advocate representing the Complainant argued that the incident took place at 2.45 p.m. *i. e.* during night time and the truck coming from the opposite side, was in high speed with glowing lamps. Besides, the truck driver whose truck was overtaken by the Complainant, did not lower its speed. It was simply an error of Judgment and not rash and negligent act. In fact contributory role of the two truck drivers cannot be ignored but the Enquiry Officer has mechanically held the Complainant guilty. He then submitted that the Complainant succeeded in taking the bus to the left side to some extent but the truck coming from opposite side dashed rear seats of drivers side. Otherwise, it was the Complainant who was at the front and should have certainly died in the accident. The fact that the Corporation was required to give compensation got fixed in the mind of the Enquiry Officer. As such, findings of the Enquiry Officer are perverse.

11. Shri Badadare, learned Advocate representing the Corporation replied that the Complainant was trained driver, was well aware of the route and ought to have been more cautious. He should not have dared to over-take the truck. When another truck was coming from opposite side. As such, findings of the Enquiry Officer cannot be said to be perverse.

12. In my Judgment, the Complainant is not charged for rash and negligent driving but is charged for driving at excessive speed. Admittedly, it was night time, he ought to have borne in mind that his Judgment may fail due to glowing light of vehicles crossing him. On the an fact, he ought to have been more alert at night time. He ought to have lowered his speed and should not have dared to over-take the truck in anticipation that the driver of the vehicle coming from opposite side, will lower his speed. It appears that he tried to take the truck to the left and the same is established by dash to rear portion of right side of his truck. However, there are circulers of the Corporation regarding safe driving and the Complainant should have adhered to the same. In such circumstances, misconduct of driving by an excessive speed is well established and findings of the Enquiry Officer cannot be branded as perverse. Accordingly, I answer Point No. 1 in the affirmative.

13. Advocate Shri Saptasagar argued that role of the two truck drivers cannot be ignored while considering proportionality of the punishment. Complainant's past record is admittedly clean and unblamished and present is the first incident. But the Labour Court got heavily influenced by the Compensation required to be paid by the Corporation and mechanically held that the three decisions are not helpful. He then submitted that in *Ramdas S/o. Kisan Navi* V/s. *The Divisional Controller, Maharashtra State Road Transport Corporation and Others reported in 1992 II CLR at page 238* punishment of dismissal for single act of accident, is held improper. He then submitted that decision in *Divisional Controller* V/s. *Gulab Tanbaji Bhandarkar* reported in 1998 (I) Mah. L. J. at page 818 is fully applicable here.

14. Advocate Shri Badadare replied that observations in Bhandarkar's case (referred above) are in the background of different circumstances, as, in that case, the accident took place at a steep blind curve, whereas the present one is on a plain road. In such circumstances, the Complainant is not entitled to misplaced sympathy and punishment of dismissal is proper.

15. Admittedly, the past record of the Complainant is clean and unblamished. In Ramdas Navi's case (referred above), it is observed that single act of accident does not deserve punishment by way of economic death by removing him from service. I am unable to satisfy as to how the Labour Court has held that these observations are of no help to the Complainant. On the contrary, those are clearly applicable.

16. In Bhandarkar's case (referred above), there was an accident resulting into death of 5 passengers and the accident took place at the steep blind curve. Employee therein was found to be totally rash and negligent, however, his past record was good. It is observed by his hardsheep that past record serves as a barometer to consider nature of punishment to be imposed. Case of an employee who commits misconducts on one occasion is certainly different from that of an employee who has been charged on several occasions for misconducts and misconduct proved against him. Similarly, the nature of the misconduct would also be a factor relevant for imposition of punishment.

17. In the present case, Complainant's past record is admittedly good. It cannot be ignored that the accident took place at night time, the Complainant succeeded in partly taking his bus to the left but there was error of Judgment on his part. Likewise, role of two truck drivers plays the material role. In such circumstances, decision in Bhandarkar's case so clearly applicable to this case. I, therefore, hold that punishment of dismissal, in the peculiar circumstances of this case, was unsustainable. Complainant's case is covered by "another set of circumstances", illustrated in Bhandarkar's case. His past record serves as a barometer but it appears that learned Labour Court has much swayed by the number of deaths and compensation paid by the Corporation. Finally, I hold that extreme punishment of dismissal, despite past clean record, is unjustifiable. According, I answer Point No. 2 in the negative.

18. Now a question arises regarding the relief to be granted to the Complainant as well as punishment. He is out of employment from 30th June 1999 *i. e.* for a period of 4 years. In my Judgment, withholding of back wages for such period will be proper punishment and proposition of law laid down in Bhandarkar's case has to be followed.

19. In the background of above discussions and findings the Revision Application needs to be allowed partly by setting aside impugned decision to the extent of punishment. Consequently, I pass following order.

Order

(*i*) The Revision Application is allowed partly.

(*ii*) Impugned decision totally dismissing the complaint is set aside.

(*iii*) The complaint is partly allowed.

(*iv*) The Respondent is directed to reinstate the Complainant with continuity of service but without back wages, with effect from 1st August, 2003.

(*v*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur.
Dated the 14th July 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 94 OF 2002.—Sou. Kalawati Dattatraya Bhosale, Plot No. 45, Gangaram Niwas, Radhakrishna Vasahat, Sangli—*Petitioner*—*Versus*—Civil Surgeon, Civil Hospital, Sangli.—*Respondent.*

In the matter of Revision u/s. 44 of the M. R. T. U. and P. U. L. P. Act.

CORAM.— C. A. Jadhav, Member.

Appearances.—Shri A. T. Upadhye, Advocate for the Petitioner.

Shri S. R. Pisal, Asst. Govt. Pleader for the Respondent.

Judgment

This is a Revision by Original Complainant challenging the order whereby her Miscl. Application (ULP) No. 10 of 1998 is dismissed for default, by Labour Court, Sangli.

2. Admittedly, the Applicant was in employment with Respondent No. 1-Civil Hospital, Sangli. She filed Complaint (ULP) No. 3 of 1990 before Labour Court, Sangli against present Respondent alleging unfair labour practice under item 1 of Schedule-IV of the M. R. T. U. and P. U. L. P. Act on the ground of oral termination. Interim order to temporarily reinstate her was passed in said complaint, whereby, she was in employment. However, the complaint came to be dismissed for default on 3rd June 1994.

3. The Applicant then filed Miscl. Application (ULP) No. 19/1994 for restoration of the complaint. That too was dismissed for default on 20th August 1998. The Applicant then filed Miscl. Application (ULP) No. 10/1998. It was also dismissed for default on 13th December 2001. This order is subject matter of this Revision.

4. I heard both sides. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order dismissing Miscl. (ULP) No. 10/1998 for default warrants interference ?

(*ii*) What order ?

7. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is allowed.

Reasons

6. The factual aspects stated hereinabove, are not in dispute. Admittedly, the Applicant was in employment by virtue of interim order passed in Complaint (ULP) No. 3/1990. Presently, she is out of employment.

7. Shri Upadhye, learned Advocate representing the Applicant submitted that the Applicant has mainly suffered as was not properly guided and taken care of by her Advocate. Other employees who were terminated like the Applicant, got proper legal advise, engaged an Advocate and got requisite relief from the Labour Court. Unfortunately, Applicant's Advocate did not properly concentrated the matter and the Applicant has ultimately suffered. In addition, she is poor illiterate lady and naturally believed totally in her Advocate. It is common knowledge that the moment a litigant feels secured the moment he engages an Advocate as he has full faith in his Advocate. Besides, the Applicant attended respective dates. This Court is aware if heavy work-load in Sangli Labour Court. Therefore, the Applicant was bonafidely waiting for communication from her Advocate. As such, revisional interference is warranted. He further submitted that the Respondent will not be prejudiced if the controversy is decided on merits and the Applicant be extended an opportunity to put her case on merits.

8. Shri Pisal, learned Assistant Government Pleader representing the Respondent filed written submissions at Exh. C-2 contending that the Applicant was totally negligent and deserves no sympathy. In fact, the Applicant was in employment by virtue of interim order and was originally appointed for 29 days only, during leave period of another employee. Besides other averments are baseless.

9. It is an admitted position that *ad-interim* relief was granted in Applicant's favour after hearing both parties and she was in employment for some period. In such circumstances, it will be proper to decide the controversy on merits. No doubt, the Applicant was absent on the date of hearing. But it cannot be denied that generally a litigant acts on advise and directions of his Advocate. The Applicant is a poor illiterate lady. Naturally, she believed in her Advocate. In my Judgment, therefore, she should not suffer for acts of her Advocate. In addition, the Respondent will not suffer if the Labour Court decides the case on merits. The Respondent can very well put its case. In such circumstances, an opportunity of being heard needs to be extended to the Applicant. Accordingly, I answer Point No. 1 in the affirmative and pass the following order :—

Order

(*i*) The Revision Application is allowed.

(*ii*) Impugned order dismissing Miscl. (ULP) No. 10/98 is set aside.

(*iii*) The Labour Court is directed to restore above application to file and decide the same on merits.

(*iv*) R. and P. be sent to Labour Court forthwith and parties shall appear there on 20th October, 2003.

(*v*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 1st October 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE EMPLOYEES' STATE INSURANCE COURT AT KOLHAPUR

APPLICATION (ESI) No. 2 OF 1993.—Shri Bapu Lagmanna Kanitkar, At & Post Herwad, Taluka Shirol, Dist. Kolhapur—*Applicant*—*Versus*—The Assistant Regional Manager, Sub-Regional Office, E.S.I. Corporation, P.M.T. Commercial Building, Swargate, Pune 411 042.—*Respondent.*

In the matter of appeal under section 54-A of the Employees' State Insurance Act.

CORAM.—C. A. Jadhav, Judge.

Appearances.—Shri B. D. Manolkar, Advocate, I/B.

Shri M. S. Topkar, Advocate for Applicant.

Shri S. V. Kotnis, Advocate for Respondent.

Judgment

This is an application in the form of appeal by an insured person under section 54-A of the Employees' State Insurance Act, read with Rule-20B of the Employees' State Insurance (Central) Rules, challenging decision of Medical Board that his permanent disablement is 10 %.

2. Admittedly, the applicant is an employee of Yeshwant Co-operative Processors Limited and is an insured person. He met with an accident on 12th November 1991, while on duty. He then took treatment of Dr. G. S. Dhavale of Ichalkaranji, Dist. Sangli. His employer informed the Respondent-Corporation about the accident. The Medical Board on examining the applicant, delivered a decision that his permanent disablement is 10%. The applicant was communicated such decision by letter dated 14th December 1992. The Applicant then made a representation against the decision. He was informed by letter dated 12th February 1993 that he can approach on appropriate Forum if dissatisfied with decision of Medical Board.

3. It is case of the applicant that assessment of permanent disability is improper as he was not examined thoroughly and only a farce of examination was made. In addition, he was not given an opportunity to explain the disability and loss thereof. In fact, he produced medical evidence regarding his treatment and was ready to explain all facts to the Medical Board. However, all those documents were not considered and arbitrary certificate was issued. It is further contended that he has lost 75% mobility and strength. He is a right handed person and is finding extremely difficult to do any work. As such, his disability is certainly substantial. On these averments, the Applicant has prayed to assess and fix his disability at 75% and to award retrospective disablement benefits accordingly.

4. The Respondent-Corporation filed its say (Exh.14) contending, at the outset, that the application is barred by limitation and no application for condonation of delay is filed. In addition, delay in filing the application is no where explained. As such, the same is liable to be dismissed on the ground of limitation itself.

5. It is case of the Corporation that averments of making farce of examination by the Medical Board are false. Infact, the Medical Board consists of eminent Medical Professionals and every insured person is thoroughly examined by them and then assessment of loss of earning capacity is made. The Applicant was examined thoroughly and was found to be disable by 10% only. Even then, false and baseless allegations are made against the Board. It is then contended that averments of 75% loss are not supported by any documentary evidence. In the circumstances assessment by the Medical Board is proper. Finally, the Respondent-Corporation supported assessment made by the Medical Board and prayed to dismiss the application.

6. Considering rival pleadings, following points arise for my determination :—

(*i*) Whether the application is within limitation?

(*ii*) It finding of point No.(i) is in the negative, whether applicant proves that there were sufficient reasons for not presenting the application within limitation?

(*iii*) Does the Applicant prove that he has suffered permanent disablement of 75%?

(*iv*) What order ?

7. My findings on above points, are as under :—

(*i*) No.

(*ii*) No.

(*iii*) No.

(*iv*) The application is dismissed.

Reasons

8. It is not in dispute that the Applicant met with an accident, then was referred to Medical Board and the Board assessed his disability at 10%. The Corporation has not seriously disputed averments of the Applicant that he took treatment of Dr. Dhavale.

9. The Applicant has produced xerox copies of certificate issued by Dr. Dhavale, Letters of his employer intimating the accident to the Corporation, and assessment certificate of the Medical Board, with list Exh.U2.

10. The Corporation has produced reports of the Medical Board and other concerned documents with list Exh.11. None of the parties lead oral evidence and accordingly filed a pursis (Ex.15).

11. The questions of limitation as well as sufficient reasons for not presenting the application within period of limitation go to the root of the matter. As such, they are determined first.

12. Rule-20B of the Employees' State Insurance (Central) Rules say that an insured person or the Corporation may appeal to the Employees' Insurance Court by presenting an application within three months of the date of communication of the decision of Medical Board or of the Medical Appeal Tribunal, to the insured person or the Corporation as the case may be. Admittedly, the Applicant was informed about the assessment of his disability by letter dated the 14th December 1992. As such, he ought to have preferred this application within three months from such date. It has also come on the record that the Corporation informed him by letter dated the 12th February 1993 that he can approach this Court, if dissatisfied with decision of Medical Board. Therefore, in any case he ought to have preferred this application within three months from 12th February 1993.

13. Admittedly, this application is presented on 13th July 1993 *i.e.* after three month from 12th February 1993. It consequently follows that the same is barred by limitation. Accordingly, I answer point No.1 in the negative.

14. It is material to note that there are no averments in the application regarding limitation. Shri Manolkar, learned Advocate representing Applicant submitted that the Applicant is a poor, illitered labourer and was un-aware of legal provisions, He is not benefited by filing application late. As such, the delay may kindly be condoned.

15. Shri Kotnis learned Advocate representing the Corporation submitted that delay can be condoned provided there are sufficient reasons for late filing of the application. However, no application for condonation of delay is made, nor there are averments in main application for condonation of delay. In addition, no oral evidence is lead by the applicant.

16. It is settled law that Court should be liberal while condoning delay. However, that does not mean that delay should be condoned in each and every matter. Liberal approach in condoning delay cannot be unduely stretched for the obvious reasons. That period of limitation is intended to bring an end to the litigation at some point of time and it must receive due consideration. In the present case, there are neither averments in the main Application regarding delay nor an application for condonation of delay is filed. In addition, no oral evidence is adduced. Consequently it cannot be accepted that there are sufficient reasons for not presenting the application within limitation. Consequently, I answer point No.2 in the negative.

17. Assuming that the delay needs to be condoned, I proceed further on merits.

18. The only evidence relied by the Applicant is xerox copy of the Medical Certificate issued by Dr. Dhavale. It shows that the Applicant was initially outdoor patient, then operated on 16th November 1991 and discharge on 24th December 1994. The certificate is totally silent about 75% of Applicant's disability, if any. There is no other convincing and satisfying evidence to establish applicant's disability of 75% as alleged. In the circumstances, I have no alternative than to hold that the Applicant has failed to prove 75% of disability as alleged. Accordingly, I answer point No.3 in the negative.

19. In light of above discussions and findings, I pass the following Order :—

Order

(*i*) The Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV
Judge,
Employees Insurance Court, Kolhapur.

Kolhapur,
dated the 30th September 2003.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

CRIMINAL REVISION (ULP) No. 3 OF 2003.–(1) Shri S. D. Vavare, Managing Diector, Hutatma Kisan Ahir Sahakari Sakhar Karkhana Ltd., Walwa, Taluka Walwa, Dist. Sangli, (2) Smt. N. M. Mali, Chairman, Hutatma Kisan Ahir Sahakari Sakhar Karkhana Ltd., Walwa, Tal. Walwa, Dist. Sangli—*Petitioners*—*Versus*—(1) Shri Ashok Akaram Chavan, At & Post Walwa, (Mal Bhag), Tal. Walwa, Dist. Sangli—*Respondent.*

In the matter of : Revision u/s 44 of the MRTU & PULP Act.

CORAM.—C. A. Jadhav, Member.

Appearances.—Shri A. T. Upadhye, Advocate for the Petitioners.

Shri S. S. Mutalik & Mrs. S. S. Mutalik, Advocate for Respondent.

Judgment

1. This is a Revision by Managing Director and Chairman of a Sugar Factory challenging legality of order passed on their Application (Exh. C-3) in Criminal Complaint (ULP) No. 5 of 2002 by Labour Court, Sangli, whereby their application is rejected by issuing summons to them.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) filed a Complaint (ULP) No. 784 of 2001 before this Court against the Managing Director of Hutatma Kisan Ahir Sahakari Sakhar Karkhana Ltd. under the MRTU and PULP Act, wherein, interim order was passed directing the Managing Director to depost amount of bonus payable to the Complainant, at par with other employees, on or before 30th November 2001.

3. The Complainant then filed above criminal complaint against the Managing Director and the Chairman by stating their names. Learned Labour Court, then ordered to issue process against accused Nos. 1 and 2 as named therein. Present Petitioners then made an Application (Exh. C-3) contending that the persons-accused Nos. 1 and 2 named in the complaint, are not Managing Director and Chairman of the Sugar Factory and hence the complaint be dismissed. The complainant objected stating that both petitioners have appeared in response to order of issuing process and the matter must proceeded further. Learned Labour Court then observed that there is a change in the name and surname only and that cannot be a good ground to allow their application. It then rejected the application, however, directed to issue summons against them.

4. I heard both Advocates. Considering rival submissions, following points, arise for my determination :—

(*i*) Whether impugned order of issuing summons to present petitioners without deciding complainant's application (Exh.U-6) is legal and proper ?

(*ii*) What order ?

5. My findings, on above points, are as under :-

(*i*) No.

(*ii*) The Revision Application is partly allowed.

Reasons

6. Factual position stated hereinabove, is not disputed. The name and surname of the accused are different, in original complaint.

7. Learned Advocate representing the Petitioners-accused argued that the complainant filed an Application (Exh.U-6) to correct names of the accused stated in title of the complaint. The Petitioners objected the application, *vide* reply Exh.C-2. However, impugned order is passed without deciding the same. The Labour Court, at the most, would have rejected the application (Exh. C-3) but illegal relief is granted to the Complainant.

8. Learned Advocate representing the Complainant replied that there are only clerical mistakes in stating name and surname of the accused and the same is allowed to be rectified. Status of the accused not disputed. Same person is going to attend the Court even after filing a fresh complaint by naming the accused properly. As such, no interference is warranted.

9. Section 40 of the MRTU and PULP Act provides that a Labour Court shall have all the powers under the Criminal Procedure Code in respect of offences punishable under said Act. It is settled position of law that the Labour Court and the Industrial Court are creatures of the Statute and have only so much jurisdiction as is confirmed upon them thereunder. They cannot assume or userp of jurisdiction which does not directly flow from the Statute under which they function.

10. Now resorting to provisions of Criminal Procedure code, section 4 thereof says that all offences under any other law shall be investigated, enquired into, tried and otherwise dealt with, according to provisions contained therein but subject to any other enactment. Admittedly, names of the Managing Director and the Chairman are not same as stated in original Criminal Complaint. R. and P. shows that the complainant made an application (Exh.U-6) for correcting names of the accused and the accused objected the same by filing reply (Exh. C-3). It is contended in the reply that there is no provision under Criminal Procedure of law or whereby names of the accused can be amended or corrected. In my judgment, therefore, order of issuing summons to present petitioners without deciding Complainat's applicaton (Exh.U-6) is contrary to provisions of law and is required to be set aside. No order is passed by the Labour Court directing/permitting the complainant to amend original names of the accused even then the names of amended as corrected. Accordingly, I answer Point No. 1 in the negative. Necessary orders need to be passed on Complainant's Application (Exh.U-6) according to provisions of law.

11. In the result, I pass following order :—

Order

(*i*) The Revision Application is partly allowed.

(*ii*) Impugned order of issuing summons in the names of accused, is set aside.

(*iii*) The Labour Court is directed to decide Complainant's Application (Exh. U-6) and Petitioner's Application (Exh. C-3) afresh, according to provisions of law.

(*iv*) R. and P. be sent to Labour Court, Sangli forth with.

(*v*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 3rd October 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

CRIMINAL REVISION (ULP) No. 4 OF 2003.–1. Shri S. D. Vavare, Managing Director, Hutatma Kisan Ahir Sahakari Sakhar-Karkhana Ltd., Walwe, Taluka : Walwe, Dist. Sangli. 2. Smt. N. M. Mali, Chairman, Hutatma Kisan Ahir Sahakari Sakhar-Karkhana Ltd., Walwe, Tal : Walwe, Dist. Sangli—*Petitioners—Versus*—1. Shri Suresh Balu Zende, At & Post. Walwe, (Kot Bhag), Tal. Walwe, Dist. Sangli—*Respondent.*

In the matter of Revision u/s 44 of the MRTU and PULP Act.

CORAM.—C. A. Jadhav, Member.

Appearances.—Shri A. T. Upadhya, Advocate, for the Patitioners.

Shri S. S. Mutalik, Adv. and Mrs. S. S. Mutalik, Advocate, for the Respondent.

Judgment

1. This is an Revision by Managing Director and Chairman of a Sugar Factory challenging legality of order passed on their Application (Exh. C-3) in Criminal Complaint (ULP) No. 4 of 2002 by Labour Court, Sangli, whereby their Application is rejected by issuing summons to them.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) filed a Complaint (ULP) No. 779 of 2001 before this Court against the Managing Director of Hutatma Kisan Ahir Sahakari Sakhar Karkhana Ltd., under the MRTU and PULP Act, wherein, interim order was passed directing the Managing Director to depost amount of bonus payable to the Complainant, at par with other employees, on or before 30th November 2001.

3. The Complainant, then filed above criminal complaint against the Managing Director and the Chairman by stating their names. Learned Labour Court, then ordered to isssu process against accused Nos. 1 and 2 as named therein. Present Petitioners then made an Application (Exh. C-3) contending that the persons accused Nos. 1 and 2 named in the complaint, are not Managing Director and Chairman of the Sugar Factory and hence the complaint be dismissed. The complainant objected stating that both petitioners have appeared in response to order of issuing process and the matter must proceeded further. Learned Labour Court then observed that there is a change in the name and surname only and that cannot be a good ground to allow their application. It then rejected the application, however, directed to issue summons against them.

4. I heard both Advocates. Considering rival submissions, following points, arise for my determination :—

(*i*) Whether impugned order of issuing summons to present petitioners without deciding complainant's application (Exh.U-6) is legal and proper ?

(*ii*) What order ?

5. My findings on above points, are as under :—

(*i*) No.

(*ii*) The Revision Application is partly allowed.

Reasons

6. Factual position stated hereinabove, is not disputed. The name and surname of the accused are different, in original complaint.

7. Learned Advocate representing the Petitioners accused argued that the complainant filed an Application (Exh.U-6) to correct names of the accused stated in title of the complaint. The Petitioners objected the application, *vide* reply (Exh.C-2). However, impugned order is passed without deciding the same. The Labour Court, at the most, would have rejected the application (Exh. C-3) but illegal relief is granted to the Complainant.

8. Learned Advocate represented the Complainant replied that there are only clerical mistakes in stating name and surname of the accused and the same is allowed to be rectified. Status of the accused not disputed. Same person is going to attend the Court even after filing a fresh complaint by naming the accused properly. As such, no interference is warranted.

9. Section 40 of the MRTU and PULP Act, provides that a Labour Court shall have all the powers under the Criminal Procedure Code in respect of offences punishable under said Act. It is settled position of law that the Labour Court and the Industrial Court are creatures of the Statute and have only so much jurisdiction as is confirmed upon them thereunder. They cannot assume or userp of jurisdiction which does not directly flow from the Statute under which they function.

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11. In the result, I pass following order :—

Order

(*i*) The Revision Application is partly allowed.

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(*iv*) R. and P. be sent to Labour Court, Sangli forth with.

(*v*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 3rd October 2003.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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